THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.19782 of 2006

Date : 13-9-2007

Between :

Sk. Hassan Miya s/o. Madar Saheb .. Petitioner

And

The Revenue Divisional Officer,
Suryapet, Nalgonda District. .. Respondent

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.19782 of 2006

ORDER:

1. Heard the Counsel.

2. This Court issued *rule nisi* on 22-9-2006 and also granted interim suspension in W.P.MP.24964/2006.

3. W.V.M.P.No.1229/2007 is filed to vacate the interim order specified supra and at the request of the Counsel on record, the Writ Petition itself is disposed of finally.

4. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondent in passing order vide proceedings No.D/221/2006 dated 14-7-2006 as illegal, arbitrary and against the principles of natural justice and consequently to set aside the same.

5. It is stated in the affidavit filed in support of the Writ Petition that the petitioner is running Fair Price Shop at Chinthalapalem village, Mellacheruvu Mandal, Nalgonda District from the past 20 years to the utmost satisfaction of the respondent authorities. It is stated that

the Writ Petition is filed questioning the action of the respondent in passing the impugned order dated 14-7-2006 suspending the authorization of the petitioner without following the due process of law. It is further stated that the respondent had issued two show cause notices on 6-2-2006 and on 8-2-2006 to the petitioner on three grounds that the petitioner had been black marketing the rice, that he had not attended the dealers meeting and that he had distributed the rice in the month of February 2006 pertaining to the month of January. To the said show cause notice, the petitioner submitted his explanation on 27-2-2006 and basing on that the authorities had passed an order vide proc.No.D/221/2006 by revoking the suspension order by warning the petitioner to be careful in future. As per the said order, it was further ordered to the Mandal Revenue Officer, Mellachervu to release the stocks to the petitioner immediately. It is also further stated that surprisingly on 14-7-2006, the respondent had issued a show cause notice to the petitioner on the ground that the respondent had received a complaint against him through the M.P.T.C. and villagers of the Chintalapalem village through phone that the petitioner is actively participating in the Gram Panchayat elections. Further, in the same show cause notice it was directed to submit the written

explanation of the petitioner within seven days of the receipt of the said show cause notice dated 14-7-2006. But, as a matter of fact the said allegations are false and frivolous and are made only to harass the petitioner in all respects. It is further stated that when the petitioner is about to submit his written explanation, the respondent had passed another order on the very same day i.e., 14-7-2007 vide Proc.No.D/221/2006 by suspending the authorization of the petitioner, by withdrawing the earlier revoking order dated 12-7-2006. The said action of the respondent is illegal, arbitrary and against the principles of natural justice. Further, the respondent had not even granted seven days time even according to the show cause notice dated 14-7-2006 and on the same day suspended the authorization which is clearly violative of the principles of natural justice. It is further stated that even as per the Order of the respondent dated 14-7-2006, there is no basis to suspend the authorization of the petitioner, more particularly there is no supporting document or material in doing so. The only allegation made against the petitioner is that the petitioner is actively participating in the Gram Panchayath elections and on that ground the respondent had proceeded to suspend the authorization of the petitioner which is illegal, arbitrary

and against the principles of natural justice. It is also further stated that though there is a provision of Appeal, the petitioner is invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India since the Order passed by the respondent is violative of principles of natural justice and an unilateral order without giving the petitioner an opportunity to file his explanation and without giving him an opportunity of hearing.

6. In the vacate application, in the counter affidavit filed by the respondent it is stated that on receipt of the complaint from the M.P.T.C. and the villagers of Chinthalapalem over phone that petitioner is actively participating in the Gram Panchayat elections, the respondent had proceeded to the Chinthalapalem village on 14-7-2006 and enquired into the complaint and in the enquiry it was observed that the petitioner is actively participating in the Gram Panchayat Elections and hence a show cause notice No.D/207/06 dated 14-7-2006 had been issued to the petitioner to submit his explanation. It is further stated that as the respondent personally enquired in the village and found that the petitioner is actively participating in the political activities in the Gram Panchayat elections it is felt necessary to place the Fair Price Shop dealership of the petitioner under suspension in the interest of consumers and as such orders were

issued vide Proceedings No.D/221/2006, dated 14-7-2006 suspending the authorization of the Fair Price Shop dealership of the petitioner. It is also further stated that on receipt of specific complaint from the M.P.T.C. and villagers, the respondent proceeded to the Chinthalapalem village and enquired with the villagers and found that the petitioner is actively participating in the political activities in the Gram Panchayat Elections which the petitioner is not supposed to do as per Rules and therefore in the interest of the villagers and the consumers of Chinthalapalem village, Orders vide Proc.No.D/221/06 dated 14-7-2006 suspending the authorization of the petitioner were issued and the same is issued pending further enquiry. It is also further stated that the respondent had personally enquired in the village and found that the petitioner is participating in the political activities in the Gram Panchayat elections and hence a show cause notice No.D/221/06 dated 14-7-2006 was issued to the petitioner to submit his explanation within seven days from the date of receipt of the show cause notice giving him reasonable opportunity. It is also further stated that it is not the first instance that a complaint had been made against the petitioner. Previously the village elders had filed complaint against the petitioner on 1-2-2006 and the

Mandal Revenue Officer, Mellachervu enquired in to the complaint and submitted report that the petitioner had sold 6.09 Qtls. of P.D.S. rice in the black market vide his Lr.No.B/282/06 dated 3-2-2006 to the Collector (Civil Supplies), Nalgonda. The Collector (Civil Supplies), Nalgonda had issued show cause notice under Section 6(B) of the Essential Commodities Act 1955 vide No.CS1/257/06 dated 23-2-2006 to represent his case either in person or through an Advocate. The Collector (Civil Supplies), Nalgonda had issued orders for confiscation dated 24-4-2006. The petitioner had not further represented the case in any court and this itself shows that the petitioner is involving in the irregularity frequently. In view of the irregularities committed by the petitioner the orders dated 12-7-2006 revoking his suspension had been withdrawn since an enquiry is contemplated and the authorization is suspended in proceedings dated 14-7-2006.

7. The Counsel on record made certain submissions on the aspect of principles of natural justice – the Counsel for the writ petitioner contending that inasmuch as no opportunity had been given, the impugned action is violative of principles of natural justice and on the contrary the learned Assistant Government Pleader for Civil Supplies contending that simultaneously

such orders can be passed. Strong reliance was placed on the decision of a Division Bench of this Court in **Gummadisetti Vs. Joint Collector, Khammam** [1]**.** The said decision was delivered by the Division Bench under A.P. Petroleum Products (Licensing and Regulation of Supplies) Order 1980 and no doubt it was observed that what is required is contemplation of action against the licencee under sub-clause (1) of Clause 28 and an appropriate decision can be taken by the licensing authority simultaneously to take action under sub-clause (1) of Clause 28 and as well as the action under sub-clause (2) of Clause 28. On the strength of this decision, it is contended that the impugned action does not suffer from any illegality whatsoever.

8. This Court is not inclined to express any further opinion relating to the applicability of the decision referred to supra to the facts of the case on hand or otherwise. In view of the fact that interim suspension was granted by this Court on 22-9-2006 in W.P.M.P.No.24964/2006 and the said order had been in force for sufficiently a long time, the respondent is directed to complete the enquiry at the earliest point of time, at any rate within a period of four weeks from the date of receipt of a copy of this order, and till then the interim suspension

granted to be operative.

9. Accordingly, with the above direction, the Writ Petition is disposed of. No order as to costs.

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Justice P.S.Narayana

Date : 13-9-2007

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[1] **2004(1) A.L.D. 535 (D.B.)**